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Australians and Their Environment, 1999

Land and sea rights claims and sacred sites

Earlier sections in this chapter conveyed something of the Aborigines' attachment to the land. That attachment is on two grounds: practical and spiritual. It is important to add, however, that the practical and spiritual aspects of Aboriginal life are intimately interwoven, much more so than in the lives of most non-Aboriginal people in Australia: the categorisation is thus merely for convenience and almost entirely artificial.

Land-rights claims and the less prominent but, for coastal groups, equally important sea-rights claims are attempts to protect what few links have been retained between the Aboriginal people and their country, and to rebuild a little of those that have been taken away. (Two extremely important High Court decisions of the 1990s related to land rights and native title — the Mabo and Wik judgements — are briefly outlined in Box 8.3.) Even where Aborigines spend most of their lives living much as European Australians do, they retain this close attachment to country and wish to experience it every now and again as a form of spiritual renewal. It is much more than a European Australian wanting to get away from the city and go bush camping for a few days. Every piece of a group's traditional territory has its sacred sites, places of deep spiritual significance to the group. Such a relationship does not fit within our dominant meta-theory with its economic-rationalist base, or within the Judaeo-Christian religious tradition, so non-Aboriginal Australians find it very difficult to understand why an ordinary-looking

landscape or seascape is so important. Some Asian Australians practising Eastern religions may come closer to understanding. Most importantly in this context, most people find it impossible to place a monetary figure on spiritual values in order to include them in, for example, the various planning and management techniques introduced in Chapter 7.

Resource and environmental implications

The inability of non-Aboriginal Australians to quantify, and often to even accept, the value of the land and sea to Aborigines has led to a major confrontation between those values and the instrumentalist, economic values dominant in the majority of the community. This is not the place to discuss the Mabo judgement in detail (Box 8.3), except to say that this historic High Court decision of 1992 opened a new chapter in the Aborigines' struggle to regain at least a little of their traditional land. The Court recognised that the land was not unoccupied when the first White settlers arrived, but inhabited by Aborigines who had a deep affinity with, and a deep understanding of, the environment and its ecosystems (Section 8.3.3). They used — exploited, if you like — the environment just as surely as later European Australians did, but in a different way that affected the environment much less. The ruling and subsequent events opened avenues for Aboriginal communities to claim native title over certain categories of land (see Box 8.3).



Now, however, when a land claim, or even a vaguely possible future land claim, appears to threaten a European use of the landscape — mining and grazing being the most common forms — there is an outcry from the White protagonists of that actual or potential ‘economic’ use, as occurred with the High Court’s ‘Wik decision’ of late 1996 (see below). Once again, we encounter the problem of undervaluing uses that are not clearly economically based, in the narrow usage of the term: miners and graziers are just as volatile in their opposition to the declaration of national parks, another devalued use. There is thus not necessarily anything racial in opposition to land claims, though there often is.

Land claims under the Mabo judgement and the resultant native title legislation actually provide for claims on a relatively small area of the continent in total. That was more than enough, however, to ring alarm bells,

even if without reason, with mining and grazing interests and their political supporters. In mid-1996 a strong push to exempt leasehold grazing land occurred, particularly in Queensland and Western Australia where it involved state governments as well as other groups. At the same time, though, Aboriginal groups and the mining industry agreed to sit down and work out a mutually acceptable approach to the issue. Mining interests were, however, getting fidgety again after the Wik decision. There is a potential conflict, just as there is between any two possible land uses. The difference in the past, and to a large extent in the present, is that the resolution of this type of conflict has been unbalanced, one use — the ‘economic’ use of mining or grazing or forestry — being seen as necessarily more valuable and more desirable than the alternative — Aboriginal occupancy (or conservation or recreation, for that matter).

BOX 8.3

The Mabo and Wik decisions and Native Title

This is not the place to discuss the legal ramifications of the Mabo (1992) or Wik (1996) judgements of Australia’s High Court in detail, but a basic knowledge of the two cases is necessary as background to many environmental and resource issues of the mid-1990s, and undoubtedly will be for discussion of such issues on the future. This summary should read in conjunction with Section 8.5 of the main text.

The historic High Court decision of 1992 known as the Mabo case opened a new chapter in the Aborigines’ struggle to regain at least a little of their traditional land and to hold it under Native Title. The Court recognised that the land was not unoccupied when the first White settlers arrived — that it was not a *terra nullius* — but occupied (in a manner recognisable under British law) by Aborigines who had a deep affinity with that land (Section 8.3.3). While those Aborigines might not have built fences and houses, nor have ploughed the land, nor have held pieces of paper proclaiming legal, individual ownership, they were nonetheless owners and occupiers of their land. The Court also ruled, however, that Native Title had been extinguished over large areas of land, specifically over any land that was now owned as freehold, and over land appropriated by the Crown for particular public purposes such as roads, schools and post offices. Native Title might still exist over leasehold land, over some public land such as national parks and similar reserves, and over Crown land not occupied by non-Aborigines. Aborigines would, however, have to submit claims for Native Title over such land on the basis of an ongoing connection with it.



While this case was first brought by Eddie Mabo in relation to Murray Island in Torres Strait, an area of land for which it was perhaps easier to argue the case and prove a continuing connection than for most areas on mainland Australia the judgement was seen as applicable to all of Australia. In November 1993 the Keating Labor Federal Government introduced legislation (the *Native Title Act 1993*, passed a few days before Christmas 1993) to allow implementation of the High Court's decision. Among other things, the Act set up the National Native Title Tribunal (NNTT) to hear claims. The *Native Title Act* survived a High Court challenge, the Court's decision striking down conflicting WA legislation. A later Act allows Indigenous Land Corporations to be set up and to become involved in the claim process. Frank Brennan's book (see Further Reading for this chapter) provides an excellent detailed, but non-legalistic and accessible, discussion of the Mabo judgement, the subsequent developments (to March 1995), and implications for the future.

In the Wik judgement of early 1996, the High Court, by a majority decision, decided that Native Title and pastoral leasehold could coexist. Both pastoral and mining interests were less than happy with the decision, as were many state governments and the new Federal Coalition Government. In early 1997 it remained possible that the Federal Government would introduce legislation to negate Native Title over such land, while it was obvious that the Prime Minister, John Howard, was becoming increasingly frustrated as he genuinely attempted to reconcile the seemingly irreconcilable views of the pastoralists and the Aborigines. By mid-1997 it seemed apparent that Howard's 'Ten-point Plan', which fell just short of extinction of Native Title (but which will probably have the same effect), was receiving grudging support from the National Party and grazing interests. Aboriginal groups are still largely opposed to his 'solution'.

